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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

HONDA MOTOR CO., LTD.; HONDA R&D CO., LTD.; AND AMERICAN HONDA MOTOR CO., INC.,
Petitioner,

v.

KARL L. OBERG,
Respondent.

On Writ of Certiorari to the Supreme Court of Oregon

BRIEF OF THE WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Amicus will address the following question:

Whether Oregon's prohibition against post-verdict judicial review of the amount of jury punitive damages awards violates due process under the Fourteenth Amendment.

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BRIEF OF THE WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

INTEREST OF THE AMICUS CURIAE

The Washington Legal Foundation (WLF) is a non-profit public interest law and policy center based in Washington, D.C. with over 100,000 members and supporters nationwide. WLF regularly appears before federal and state courts promoting economic liberty, free enterprise principles, and a limited and accountable government. WLF's Legal Studies Division also publishes monographs and other publications on these topics.

In particular, WLF has devoted substantial resources over the years through litigation and publishing to promote civil justice reform, including tort reform and opposing excessive punitive damages and attorney's fees awards.

See, e.g., TXO Prod. Corp. v. Alliance Resources Corp., 113 S. Ct. 2711 (1993); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *Farrar v. Hobby*, 113 S. Ct. 566 (1992); Stephen M. Turner, et al., *Punitive Damages Explosion: Fact or Fiction?* (Washington Legal Foundation Working Paper No. 50, 1992); Victor E. Schwartz, *Punitive Damages: Should The Constitution Of The United States Provide Boundaries?* (Washington Legal Foundation Legal Backgrounder, 1989); Theodore B. Olson and Theodore J. Boutrous, *The Constitutionality of Punitive Damages* (Washington Legal Foundation Legal Backgrounder, 1989). Excessive and unpredictable punitive damages awards are ultimately harmful to the economy, workers and consumers.

WLF believes that it can bring a broader perspective on the issues presented in this case which will assist this Court in deciding the case in such a way as to give clearer guidance to state courts on the imposition and judicial review of punitive damage awards. By letters filed with the Clerk of the Court, the parties have consented to the filing of this brief.

STATEMENT OF THE CASE

Amicus Curiae is, in the interest of brevity, omitting any detailed statements of the facts of this case. Amicus adopts by reference the statement of facts contained in Petitioner's Brief.

In brief, Respondent was injured while operating a three-wheeled all-terrain vehicle manufactured, distributed, and sold by Petitioners Honda Motor Co. Ltd., Honda R&D Co., Ltd, and American Honda Motor Co., Inc. (collectively "Petitioners" or "Honda"). Respondent subsequently brought suit in Oregon state court seeking compensatory and punitive damages.

During a jury trial, evidence was introduced that Petitioners' net worth was $4.9 billion. Respondent's counsel argued that the jury should award punitive

damages against Petitioners in the amount of "one-tenth of one percent of their net worth . . . $4.9 million" and the court later instructed the jury to consider Petitioners' net worth in its assessment of punitive damages. The jury found Petitioners liable under strict liability for defective design of the product and failure to warn and awarded Respondent $919,390.39 in compensatory damages and $5 million in punitive damages.[1] Because the jury found Respondent 20% at fault, the court reduced the compensatory award to $735,512.31 under Oregon's comparative negligence statute; however, no reduction was made to the punitive damages award.

Honda filed motions for new trial and judgment notwithstanding the verdict on several grounds, including that the jury awards of compensatory and punitive damages were excessive.[2] The trial court denied Petitioners' motions without explanation.

Petitioners' subsequent appeals to both the Oregon Court of Appeals and to the Oregon Supreme Court on the grounds that the punitive damages award was excessive were rejected on the basis that Article VII, Section 3, of the Oregon Constitution prohibits review of the amount of punitive damages awards.[3] Both courts also held that due process does not require post-verdict review of the size of punitive damages awards.

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[1] The trial court instructed the jury that punitive damages were not to exceed $5 million (Trial Tr. 2945). This was presumably because Respondent was limited to that amount as set forth in the *ad damnum* clause of his amended complaint.

[2] Amicus understands that Petitioners will address both the award of compensatory and punitive damages. This brief will focus only on the award of punitive damages.

[3] Oregon Const. art. VII, § 3 (1991) provides, in pertinent part, "In actions at law, where the value in controversy shall exceed $200, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is evidence to support the verdict."

SUMMARY OF ARGUMENT

In recent terms, this Court has had occasion to consider the applicability of the due process clause of the Fourteenth Amendment to punitive damages awards. *TXO Prod. Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991). In both *TXO* and *Haslip* this Court affirmed that the due process clause provides some limit to the size of punitive damages awards and stated that an award that was not reasonable in its amount or rational in light of its purpose to punish wrongful conduct and to deter its repetition would offend due process.

This Court held in *Haslip* and *TXO* that the awards of punitive damages under the particular facts of those cases did not violate either procedural or substantive due process. However, in both cases, the punitive damages awards were found not to violate due process in large part because of the availability and quality of post-verdict review of the punitive damages awards.[4] In sharp contrast, by not providing for *any* post-verdict review on the amount of punitive damages awards, Oregon has eliminated the only meaningful procedural safeguard against excessive punitive damage awards for due process purposes. While punitive damages may serve a legitimate state interest in punishing and deterring certain conduct, this Court recognized in *Haslip* and *TXO* that punitive damages also carry the potential for extreme unconstitutional deprivations.

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[4] In *Haslip*, Alabama provided a post-verdict hearing which required the trial judge to articulate specifically his or her reasons for setting aside a punitive damage award or refusing to do so. Thereafter, an appellate court reviewed the award in accordance with established objective criteria, providing an additional check on the jury's discretion. In *TXO*, West Virginia also had a system of both trial and appellate level review.

Post-verdict review of jury damage awards, including punitive damages, is deeply ingrained in our jurisprudence -- and for good reason. Post-verdict review at both the trial and appellate court levels provides a unique and important safeguard against a jury award improperly based on passion, prejudice or bias. Oregon's system of punitive damages, which dispenses with the most basic and traditional common law procedural safeguards, offends due process and should be declared unconstitutional.

Moreover, Amicus' empirical survey of cases decided in 1993 (appended to this brief) shows that upon judicial review, approximately 54% of jury punitive damages awards were modified or upset in some manner, either because the punitive damages award was stricken, or was vacated and remanded, or was reduced in amount, or some combination thereof. Prior published studies discussed *infra* have presented similar data, leading to the conclusion that post-verdict review of jury punitive damages awards by experienced trial and appellate judges is a necessary safeguard for a determination that is plainly subject to error, including on the ground of undue excessiveness. The safeguard of post-verdict review of punitive damages awards is not merely an abstract principle, but an essential element of our jurisprudence in practice.

Of particular concern to Amicus is the consideration given to the wealth or financial condition of the defendant by juries awarding punitive damages. Wealth, especially corporate wealth, is a complex subject which can be easily manipulated to exaggerate the true financial condition of the relevant corporate defendant. This is compounded by the fact that courts may apply different definitions of "wealth" for punitive damages purposes. Moreover, in the context of products liability suits, as in the present case, a single manufacturer may be subject to multiple punitive damages awards for the same course of conduct, making the wealth factor even more illusory.

This Court has recognized that consideration of defendant's wealth increases the risk that an award of

punitive damages will be improperly influenced by prejudice. Evidence of wealth can cause juries to focus on the financial resources of the defendant to the exclusion of all other factors. This is especially the case where the defendant is a large out-of-state corporation or, as here, a foreign corporation. Thus, juries may fall prey to deceptively simplistic and often emotional requests for punitive awards that are a "mere fraction" or a "small percentage" of defendant's wealth, as was the case here. Arithmetically, however, such requests can translate into multi-million dollar punitive damages awards that exceed by several orders of magnitude any amount that could conceivably meet the legitimate goals of punishment and deterrence. While consideration of wealth in and of itself may not violate due process, the serious risk that such evidence will prejudice the jury heightens the need for adequate procedural safeguards at both the trial and post-verdict level against improperly based awards.

In sum, definite and meaningful post-verdict review of punitive damages awards is the only way to assure that a jury's discretion is exercised with reasonable constraints so as to satisfy due process.

ARGUMENT

I. POST-VERDICT REVIEW OF PUNITIVE DAMAGES AWARDS IS A FUNDAMENTAL REQUIREMENT OF DUE PROCESS

A. Post-Verdict Review Has Historically Been Recognized As A Check On Excessive Punitive Damages Awards

An historical review of case law reveals that jury damage awards, including those for punitive damages, have traditionally been subject to the safeguard of post-verdict

judicial review.[5] *Accord* G.W. Field, *The Law of Damages* 65 (1876) ("the only check" on a jury's discretion in awarding punitive damages is the power of the court to set aside the verdict where the jury was unduly influenced by passion or prejudice); J. Sutherland, *Law of*

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[5] At common law, a court could set aside a jury verdict and order a new trial if the jury damage award was excessive, or unduly influenced by prejudice, passion or improper motives. *See Wood and Gunston*, 82 Eng. Rep. 867, 867 (1655); *Hewlett v. Cruchley*, 128 Eng. Rep. 696, 698 (1813); *Chesapeake and Ohio Canal Co. v. Knapp*, 34 U.S. 541, 570 (1835); *Kendall v. Stone*, 2 Sand. 269, 287 (N.Y. Super. Ct. 1848) (punitive damages); *Burkett v. Lanata*, 15 La. Ann. 337, 340 (1860) (punitive damages); *McCarthy v. Niskern*, 22 Minn. 90, 91 (1875) (punitive damages); *Simmons v. Fish*, 97 N.E. 102, 103 (Mass. 1912) ("It is a constitutional incident of trial by jury, which cannot be taken away by legislative action, that the assistance and protection of the presiding judge shall be available to the litigants in setting aside verdicts not so supported by law and evidence that they ought to stand.").

Moreover, our courts have long endorsed conditioning the denial of defendant's new trial motion on plaintiff's agreement to remittitur. *See Fury v. Stone*, 2 Dall. 184 (Pa. 1792); *Blunt v. Little*, 3 F. Cas. 760, 762 (1822); *Belknap v. Boston & Maine R.R.*, 49 N.H. 358, 374 (1870) (court ordered a new trial conditioned on remittitur, in part because "in assessing the exemplary damages, [the jury] was affected by some improper influences. . . ."); *Hansen v. Boyd*, 161 U.S. 397, 411 (1896) (appellate court, in reviewing judgment, can condition granting a new trial on remittitur).

Dating before 1868, trial and appellate courts have also ordered new trials based solely on the issue of damages. *See Davenport v. Bradley*, 4 Conn. 309, 311 (C.C. 1822) (No. 1578); *Boyd v. Brown*, 17 Pick. 453, 461 (Mass. 1835) (because the jury award was excessive, the court granted a new trial solely on the issue of damages). Since that time, courts have continued to grant new trials solely on the issue of damages. *See Simmons v. Fish*, 97 N.E. 102, 104 (Mass. 1912) (an appellate court could grant a new trial on a single issue "as a part of its inherent judicial authority"); *Norfolk Southern R. Co. v. Ferebee*, 238 U.S. 269 (1915); *Gasoline Prods. Co. v. Champlin Refining Co.*, 283 U.S. 494 (1931).

Additionally, appellate courts have traditionally reviewed trial court damage awards. *See Parsons v. Bedford*, 28 U.S. 433, 447-48 (1830) (appellate review of issues of law); *Phillips & Colby Constr. Co. v. Seymour et al.*, 91 U.S. 646, 656 (1875) (because the verdict was not responsive to any issue raised by the pleadings, the appellate court set aside the verdict conditioned on defendant agreeing to remittitur).

Damages 742 (1882) (court can set aside an excessive punitive damages award); Theodore Sedgwick, *Measure of Damages* 537-538 n.1 (1868) ("in cases proper for exemplary damages . . . the court may exercise the power it always possesses to grant a new trial for excessive damages.").

In *Haslip*, this Court characterized the common law approach to punitive damages:

> Under the traditional common-law approach, the amount of the punitive award is initially determined by a jury instructed to consider the gravity of the wrong and the need to deter similar wrongful conduct. The jury's determination is then reviewed by trial and appellate courts to ensure that it is reasonable.

Haslip, 499 U.S. at 15. *See also id.* at 26 (Scalia, J., concurring) (quoting Field, *supra*, at 65); *TXO*, 113 S. Ct. at 2729-30 (O'Connor, J., dissenting) ("courts at common law in England traditionally would strike any award that appeared so grossly disproportionate as to evidence caprice, passion, or bias. This practice has long been followed in this Nation as well.").

Thus, premising the constitutionality of a jury award of punitive damages on its common law origins requires acknowledgement that post-verdict judicial review of such an award was historically available as a safeguard against excessiveness.[6] Indeed, in both *Haslip* and *TXO* this Court upheld the respective procedures of both Alabama and

[6] In *Haslip*, this Court relied on the common law origins of punitive damages awards in finding that due process was not violated. *Haslip*, 499 U.S. at 15-18. Justice Scalia's concurring opinion also extensively analyzed the common law history of punitive damages awards. *Id.* at 24-40 (Scalia, J., concurring).

West Virginia in large measure because of the availability and quality of post-verdict review.[7]

This Court's careful attention to the post-verdict review procedures in both *Haslip* and *TXO* belies any contention that trial procedures alone are sufficient to meet the requirements of due process. As summed up by Justice Scalia in his concurring opinion in *TXO*, "'procedural due process' requires judicial review of punitive damages awards. . . ." *TXO*, 113 S. Ct. at 2727 (Scalia, J., concurring).

By prohibiting post-verdict review of jury punitive damages awards for excessiveness, Oregon has chosen a path that sharply departs from an "ancient" procedure that provides litigants with a fundamental safeguard against improperly grounded and potentially devastating monetary judgments. *See Twining v. New Jersey*, 211 U.S. 78, 101 (1908) ("Consistently with the requirements of due process, no change in ancient procedure can be made which disregards those fundamental principles. . . ."). To our knowledge, Oregon stands alone in this regard.[8]

[7] *See Transportation Ins. Co. v. Moriel*, D-1507, 1994 Texas LEXIS 23, *59 (Tex. Feb. 2, 1994) (the court found that "[t]he broad jury discretion that is the hallmark of the common law punitive damages system must be complemented by procedural safeguards that will ensure against excessive or otherwise inappropriate awards").

[8] Significantly, prior to the 1910 amendment to Article VII, Section 3 of its Constitution, Oregon also provided for post-verdict review of jury damage awards, codifying the common-law procedure by statute:

> The former verdict or other decision may be set aside and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:
>
> * * * * *
>
> 5. Excessive damages, appearing to have been given under the influence of passion or prejudice.

Or. Stat. Ann. § 174 (1902).

Oregon's prohibition against any post-verdict review of the amount of a punitive damages award must also fall in the face of the conclusions in both *Haslip* and *TXO* that a punitive damages award can be so excessive as to violate substantive due process. Accordingly, post-verdict review is required *at a minimum* to determine whether even a properly instructed jury has made so outrageous an award of punitive damages as to violate due process.

B. Review of Punitive Damages Awards Should Be Available At Both The Trial And Appellate Court Levels

Post-verdict review by both trial and appellate courts is important to ensuring that unconstitutionally excessive punitive damages awards are not permitted to stand. Trial and appellate level review provide fundamentally different, but complementary functions.

The trial judge, who has heard all the evidence and arguments of counsel, has observed the witnesses, and has instructed the jury, is in the best position to determine whether a jury punitive damages award is unduly excessive or is otherwise based on prejudice or other improper motive. *See TXO*, 113 S. Ct. at 2720, 2724. In addition, the trial judge can draw on his experience and knowledge of other cases to test the rationality of the amount of punitive damages arrived at by the jury.[9] Thus, in *Haslip*, this Court was reassured by Alabama's post-trial review which "ensures meaningful and adequate review by the

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[9] Moreover, the policies underlying punitive damages make such awards analogous to an equitable remedy, which is traditionally within the province of the court to decide. In a recent case, the Supreme Court of Kansas upheld the constitutionality of a state statute that provided for the trial judge to set the amount of punitive damages once the jury finds that such damages should be awarded. *Smith v. Printup*, No. 67,591, 1993 WL 540020 (Kan. Dec. 30, 1993) (Kansas Supreme Court found that there was no common law right to a jury determination of the amount of punitive damages, which may be regarded as equitable in nature).

trial court whenever a jury has fixed the punitive damages." *Haslip*, 499 U.S. at 20.

Appellate review provides an additional check on the jury's or trial court's discretion. *See id.* at 20. In *Haslip*, this Court noted with approval that the Alabama Supreme Court applied detailed substantive factors in evaluating the punitive damages award. In recognizing the role of appellate review, the Court found that "[t]his appellate review makes certain that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition." *Id.* at 21.

Moreover, appellate courts bring a broader perspective to bear on the issue of punitive damages which has wide-ranging implications, especially, for example, in product liability and mass tort cases. Hearing appeals from a number of trial courts gives appellate judges greater insight from a policy viewpoint to determine whether the amount of a punitive damages award is rational in fulfilling the goals of punishment and deterrence. Thus, in *Haslip*, this Court noted with approval:

> The Alabama Supreme Court's post-verdict review ensures that punitive damage awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages.

Id. at 22.

In view of the potential for extreme deprivations caused by punitive damages awards, fundamental fairness should accord litigants with the full measure of traditional safeguards provided by both trial and appellate level review.

C. Empirical Surveys of Judicial Decisions Demonstrate The Critical Need For Post-Verdict Judicial Review Of Punitive Damages Awards In Practice

Post-verdict judicial review of punitive damages awards is not merely an abstract safeguard, but one that has significant practical importance in our system of administering justice. Data from empirical surveys of the application of post-verdict review demonstrate that trial and appellate courts frequently find it necessary to strike, vacate and remand, reduce, or otherwise modify jury punitive damages awards.

To illustrate the impact of post-verdict review on recent punitive damages awards, Amicus surveyed 1993 state and federal judicial decisions in which trial and appellate courts reviewed jury awards of punitive damages.[10] The survey identified 284 such decisions. In 54% of these decisions, the jury awards were either stricken, remanded, or reduced. For the 84 awards of $1 million or more, 64% were stricken, remanded, or reduced. Moreover, for the 31 awards of $5 million or more, 74% were stricken, remanded, or reduced. App. 2a.

While Amicus' survey provides only a "snapshot" of one year of judicial decisions, it demonstrates that, notwithstanding the traditional deference accorded to jury verdicts, trial and appellate judges are frequently compelled to correct errors in punitive damages awards. Thus, from a practical perspective, the trial process of awarding punitive damages is highly prone to error, both

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[10] The survey was conducted by a computerized search through the Westlaw® database to identify 1993 judicial decisions in which jury punitive damages awards were reviewed by a trial or an appellate court. The search parameters used and the data generated from this survey is appended to this brief. The summary chart and case tables dramatically show the importance of post-verdict review both on an overall and on a case-by-case basis. *See* App. 1a-22a.

in deciding to award punitive damages as an initial matter, and in setting their amount.

Other surveys have reported similar data. For example, one leading commentator reported in a 1983 article that

> [o]ut of forty-five reported cases decided by the New York appellate courts in the last decade in which the court either determined whether there was sufficient evidence of malice to support any punitive award or determined whether the jury had awarded an excessive amount of punitive damages, thirty-five punitive damage awards were remitted or reversed.

Malcolm E. Wheeler, *The Constitutional Case For Reforming Punitive Damages Procedures*, 69 Va. L. Rev. 269, 288 (1983) (footnote omitted). The commentator concluded that

> [i]n view of the narrow scope of appellate review, these data show that appellate courts believe that jurors in punitive damages cases often reach erroneous results and are influenced by improper considerations.

Id.

Another commentator, in an article defending the imposition of punitive damages in product liability cases, concluded that there is no punitive damages crisis, in part because "both trial and appellate court judges scrutinize punitive damages awards carefully and modify punitive damages awards in the majority of appeals." Michael Rustad, *In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data*, 78 Iowa L. Rev. 1, 54 (1992). Moreover, that

commentator's analysis of cases reported during the period 1965-1990 shows that punitive damages awards were upheld only 25% of the time. *Id.* at 55.

The frequency with which trial and appellate judges find it necessary to overturn or modify jury punitive damages awards is impossible to ignore. Apart from demonstrating that there is something fundamentally wrong with the way juries impose punitive damages, the above data illustrate that Oregon's removal of the most important check on unbridled jury discretion denied Petitioners their fundamental right to due process.

II. CONSIDERATION OF DEFENDANT'S WEALTH IN DETERMINING THE AMOUNT OF PUNITIVE DAMAGES HEIGHTENS THE NEED FOR POST-VERDICT REVIEW FROM THE STANDPOINT OF DUE PROCESS

A. This Court Recognizes That Consideration Of Wealth Increases The Risk That A Punitive Damages Award Will Be Improperly Influenced By Prejudice

Of the many factors that state trial courts permit juries to consider in arriving at the amount of punitive damages, evidence of the defendant's wealth is potentially the most prejudicial. Corporate "wealth," involving dollar values in the millions, and even billions, is easily manipulated into superficially rational-sounding punitive damages awards, particularly in the context of product liability suits. The influence of such evidence, coupled invariably with highly emotional appeals to deliver an award that "sends a message," is inescapable. *See* Trial Tr. at 2927. In the present case, for example, evidence was introduced that Honda's net worth was $4.9 billion. During summation, Respondent's counsel seized on that figure as the *only* basis for assessing an *amount* of punitive damages:

> There's a very good reason why you were told and this is an undisputed fact, that Honda has a net worth of $4.9 billion, yes with a B, dollars. Our request to you is that you order Honda to pay one-tenth of one percent of their net worth in punitive damages, and that is $4.9 million.[11]

Trial Tr. at 2838. The Oregon trial court thereafter instructed the jury, among other things, that it "shall" consider "the financial condition of the defendant" in deciding punitive damages.[12] *Oberg v. Honda Motor Co., Ltd.*, 851 P.2d 1084, 1095 n.11 (Or. 1993).

In *TXO*, this Court acknowledged the significance of permitting the jury to consider the "wealth of the wrongdoer" in determining the measure of punitive damages:

> We agree with TXO that the emphasis on the wealth of the wrongdoer increased the risk that the award may have been influenced by prejudice against large corporations, a risk that is of special concern when the defendant is a non-resident.

TXO, 113 S. Ct. at 2723.

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[11] During rebuttal, Respondent's counsel increased his request to $5 million: "Think $5 million. How long will Honda or any other company that size remember a $5 million verdict? One-tenth of one percent of their worth." Trial Tr. at 2927.

[12] Oregon recognizes that wealth is a potentially prejudicial factor and accordingly limits the introduction of such evidence at trial. Thus, Oregon law provides that "evidence of the defendant's ability to pay shall not be admitted unless and until the party entitled to recover establishes a prima facie right to recover under subsection (1) of this section." Or. Rev. Stat. § 30.925(2) (1991). Although it is not stated in the opinions of the Court of Appeals of Oregon and the Oregon Supreme Court, apparently the trial court found that a prima facie case had been made, supporting the introduction of evidence of Honda's wealth.

Similarly, in *Haslip*, this Court found it noteworthy that evidence of the defendant's wealth was excluded from the trial in accordance with Alabama law.[13]

> While punitive damages in Alabama may embrace such factors as the heinousness of the civil wrong, its effect upon the victim, the likelihood of its recurrence, and the extent of defendant's wrongful gain, the fact finder must be guided by more than the defendant's wealth. Alabama plaintiffs do not enjoy a windfall because they have the good fortune to have a defendant with a deep pocket.

Haslip, 499 U.S. at 22.

In *Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981), this Court also recognized the prejudicial impact that evidence of wealth can have on the size of punitive damages awards in holding that municipalities were immune from punitive damages under 42 U.S.C. § 1983. The Court expressed concern about the prejudicial impact that evidence of a municipality's wealth could have on the size of a punitive damages award:

> Because evidence of a tortfeasor's wealth is traditionally admissible as a measure of the amount of punitive damages that should be awarded, the unlimited taxing power of a municipality may have a prejudicial impact on the jury, in effect encouraging it to impose a sizeable award. The impact of such a windfall recovery is likely to be both unpredictable and, at times, substantial, and we are sensitive to the possible strain on local treasuries and therefore on services available to the public at large. Absent a compelling reason for approving such an award,

[13] In Alabama, evidence regarding the "financial position" of the defendant is only considered during appeal to the Alabama Supreme Court to assist in determining whether the award was excessive or inadequate. *Haslip*, 499 U.S. at 21-22.

> not present here, we deem it unwise to inflict the risk.[14]

Id. at 270-71 (footnotes omitted).

In her dissenting opinion in *TXO*, Justice O'Connor brought into focus the ways in which evidence of wealth can prejudice juries. In particular, Justice O'Connor identified the possibility that juries can be urged to consider the wealth of the defendant to the exclusion of all other factors. *See TXO*, 113 S. Ct. at 2738 (O'Connor, J., dissenting) (plaintiff's counsel's argument was "a plea for the jury to award punitive damages based exclusively on TXO's wealth"). As Justice O'Connor also observed, when combined with the status of the defendant as an out-of-state corporation, evidence of wealth can lead to devastating punitive damages awards:

> Given the absence of another plausible explanation for this monumentally large punitive damages award, I believe it likely, if not inescapable, that the jury was influenced unduly by TXO's out-of-state status and its large resources.

Id. at 2739. In addition, evidence of the financial status of a large corporation may cause juries to base punitive damages awards on an improper effort to transfer wealth from defendant to plaintiff. *Id.* at 2737.

Moreover, it is misleading and inaccurate to present to the jury a defendant's overall financial "resources" as if it were a "pie" from which a slice should be taken in the form of a punitive damages award. This is particularly the case where, as here, a large corporation is a defendant

[14] *See also* Clarence Morris, *Punitive Damages in Tort Cases*, 44 Harv. L. Rev. 1187, 1191 (1931) (prejudicial impact of wealth evidence); Kenneth S. Abraham and John C. Jeffries, Jr., *Punitive Damages and the Rule of the Law: The Role of Defendant's Wealth*, 18 J. of Legal Stud. 415 (1989) (arguing against admission of wealth evidence).

in a typical products liability action involving a mass marketed product.

Undoubtedly, a large corporation is likely to have an impressive balance sheet, the figures of which represent enormous sums of money to the average juror. Such an image, however, distorts the true picture of the modern corporation, which is likely to employ thousands of people, support the economies of many communities and provide a variety of useful and necessary products and services for consumers and businesses. Most importantly, in the case of a diversified corporation, corporate wealth is generated from a host of products and activities that may be completely unrelated to the one accused. Thus, having a jury focus on a corporation's *entire* financial wealth as the source for a punitive damages award where the conduct at issue may involve only one of the corporation's many activities completely distorts the purpose of punitive damages awards.[15]

The potential for a corporate defendant's great wealth to stoke the fires of a jury's passion, leading to an unconstitutionally excessive punitive damages award, can only be checked by the more sober review that a trial or appellate court can bring to bear. While we do not submit that the mere consideration of a defendant's wealth in determining punitive damages violates due process, the use

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[15] Significantly, this is the first products liability case in which this Court is addressing the due process implications of punitive damages. Petitioners were found liable for strict liability design defect and failure to warn, not the type of malicious conduct that Justice Kennedy found supported the enormous punitive damages award in *TXO*. *TXO*, 113 S. Ct. at 2726 (Kennedy, J., concurring) ("TXO acted with malice. This was not a case of negligence, strict liability or *respondeat superior*. . . . A case involving vicarious liability, negligence, or strict liability might present different issues.").

Moreover, the jury determined that Respondent was 20% at fault for the accident that caused his injuries. For Respondent to also recover a punitive damage award based on a percentage of Petitioners' wealth under these circumstances is incongruous.

of such evidence underscores the need for adequate procedural safeguards to protect against the potential for jury punitive damages awards premised on prejudice. *See id.* at 2737-38 ("This is not to say that consideration of a defendant's wealth is unconstitutional. . . . Nonetheless, courts must have authority to recognize the special danger of bias that such considerations [as wealth] create."). Where, as here, evidence of Petitioners' wealth was essentially the sole basis for determining the amount of its punitive damages award, Oregon's prohibition against post-verdict review violated due process.

B. Wealth Is A Complex Factor That Makes The Need For Post-Verdict Review Even More Compelling From The Standpoint Of Due Process

An assessment of wealth, and in particular corporate wealth, is an extremely complex concept. As one commentator noted:

> Because the defendant's wealth is a relevant factor in determining the amount of punitive damages, one must inquire what 'wealth' really means in the case of a manufacturing entity. Basic financial sheet data such as sales, profits, and net worth most often have been regarded as the relevant indicators of a corporation's 'wealth.' Yet figures on a company's sales are often largely unrelated to a company's true financial prosperity, for very little of the gross earnings remains - even when times are good - after deducting the costs of materials, labor, sales administration, taxes, and increasingly, the cost of capital. Even profits after taxes are plainly not idle wealth, because the enterprise will fail if the owners do not receive a fair return on their investment. And even after the payment of dividends, although such retained 'profits' may travel to the balance

> retained 'profits' may travel to the balance sheet adding to net worth, the remaining dollars hardly represent a pot of idle gold, ripe for plucking by the plaintiff and his lawyer, for usually they will be reinvested in plant, equipment, salaries, and other future costs of operation - 'the costs of staying in business.'

David G. Owen, *Problems in Assessing Punitive Damages Against Manufacturers of Defective Products*, 49 U. Chi. L. Rev. 1, 19-20 (1982) (footnotes omitted). *See also Europlast Ltd. v. Oak Switch Systems, Inc.*, 10 F.3d 1266, 1271 (7th Cir. 1993) (citation omitted) (the court noted that determining a party's solvency "requires a factual review of the [parties'] financial condition and the application of complex and sometimes conflicting accounting practices and valuation theories"); *Jersild v. Aker*, 775 F. Supp. 1198, 1201 (E.D. Wis. 1991) ("ascertaining the 'market value' of the shares of a closely-held corporation requires complex - and perhaps subjective - financial analysis. . . .").

Additional complications arise in determining whether a defendant's "gross" or "net" financial resources are to be submitted to the jury and how those terms are defined.[16] If net wealth is the appropriate inquiry, then determining what deductions must be made from gross financial resources to arrive at net wealth further complicates the use of wealth evidence. Related to this issue is the extent to which, if any, a corporate parent's financial resources should be considered in assessing punitive damages against

[16] In a very recent case, the Ninth Circuit Court of Appeals reversed and remanded a jury punitive damage award of $3.6 million, in part because the evidence of defendant's financial condition was based on the "gross," instead of the "net," revenues it derived from the wrongful conduct. *Boyle v. Lorimar Productions, Inc.*, Nos. 91-56381, 91-56488, 1994 WL 4598, at *2 (9th Cir. Jan. 11, 1994). Under California case law, only net revenue is relevant to punitive damages.

a subsidiary. While it may be superficially appealing to include the financial resources of related corporations in assessing the named corporate defendant's wealth, such a practice ignores the nature of corporate identity and form and may be fundamentally unfair given the facts of the case.

Jurors are not likely to comprehend the myriad adjustments to financial data necessary to fairly and accurately assess a corporation's financial status. Moreover, the fact that a corporation's wealth may be valued in the millions, if not billions, of dollars adds to the risk that the sensibilities of jurors may be overwhelmed by such enormous sums of money. Consequently, evidence of extremely large dollar figures, combined with sophisticated financial arguments, "may all begin to blur in the minds of many jurors." Owen, *supra*, at 20. As a practical matter, jurors may thus become receptive to the simplest argument available -- that the punitive damages award should be based on an arbitrarily selected percentage of defendant's "wealth." All of this underscores why the broad discretion traditionally accorded to juries must be complemented by appropriate procedural safeguards, including post-verdict review.

The significance of the wealth factor is underscored by the fact that almost all jurisdictions permit juries to consider evidence of defendant's wealth when determining punitive damages.[17] Notably, the clear majority of these jurisdictions recognize the potential prejudice of wealth evidence by providing trial-level procedural safeguards such as requiring plaintiff to first make a threshold

[17] Our analysis shows that only Alabama, Kentucky, Michigan and Nebraska clearly prohibit the jury from hearing wealth evidence.

showing of entitlement to punitive damages or by bifurcating the proceedings.[18]

However, trial-level procedures, which only determine whether juries may hear evidence of wealth, do not prevent even properly instructed juries from basing punitive damages awards on bias or prejudice. Significantly, all states, with the sole exception of Oregon, additionally provide for post-verdict review of the amounts of jury punitive damages awards. Such review is critical to ensure that unduly excessive punitive damages are not assessed.

C. The Degree Of Potential Deprivation Compels Post-Verdict Review of Punitive Damages Awards

This Court has recognized that the degree of safeguards required by due process is related to the degree of potential deprivation. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *See also Haslip*, 499 U.S. at 46 (O'Connor, J., dissenting) ("Our scrutiny under the vagueness doctrine intensifies, however, in proportion to the severity of the penalty imposed.") (quoting *Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-499 (1982)). Introduction of evidence regarding the defendant's wealth undoubtedly leads to the potential for extremely large and prejudicially-based punitive damages awards. The all too common resort to fixing punitive damages based on a relatively "small" percentage of a corporation's wealth can easily lead to an outrageously excessive award in terms of what is appropriate for punishment and deterrence.[19] This is especially the case

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[18] An annotated analysis of how each of the fifty states as well as the District of Columbia, the Virgin Islands, Puerto Rico and Guam treat wealth evidence is set forth in the appendix to this amicus brief. App. 23a-26a.

[19] For example, a punitive damage award based on just 1% of the wealth of a corporation "valued" at $1 billion will automatically yield a $10 million award.

state corporation, or as here, a foreign corporation, whose "wealth" is valued in the billions.[20]

Oregon's decision to dispense with any post-verdict review is therefore especially egregious when the defendant's wealth must be considered in fixing the amount of the award. As this Court stated in *Mathews*, "the degree of potential deprivation that may be created by a particular decision is a factor to be considered in assessing the validity of any . . . decisionmaking process." *Matthews*, 424 U.S. at 341. Removing the check of post-verdict review on jury prejudice and bias while allowing wealth to serve as a means to unduly increase punitive damages awards violates due process.[21]

That Oregon provides certain safeguards relating to the jury's consideration of wealth (*i.e.*, first requiring a finding of a *prima facie* case of punitive damages) is not

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[20] The potential for devastating punitive damage awards is exacerbated in product liability cases involving a mass marketed product such as the vehicle involved here. In contrast to *Haslip* and *TXO* where the conduct at issue essentially involved isolated events, the defendant in a products liability case is subject to punitive damage claims from multiple plaintiffs, in multiple jurisdictions, under multiple standards. Accordingly, arguments in support of assessing a manufacturing defendant a "percentage of its wealth" in any single case erroneously assumes that the defendant has unlimited resources to satisfy every potential plaintiff. It also demonstrates that a real danger of wealth evidence is that it will invariably be used by juries to *increase* punitive damages and not as merely one of a host of factors juries should use in arriving at a rationally-based and proportionate award.

[21] We note that the third *Mathews* factor is the governmental interest in avoiding these additional procedures. *Mathews*, 424 U.S. at 321. However, Oregon's decision not to provide post-verdict review was not premised on the burden of additional procedures. *See* Hall S. Lusk, *Forty-Five Years of Article VII, Section 3, Constitution of Oregon*, 35 Or. L. Rev. 1, 1-2 (1955). Moreover, as Petitioners clearly pointed out, Oregon courts already provide excessiveness review in cases arising under federal statutes. (Cert. Pet. at 15). In addition, whatever administrative burdens might be associated with such review do not outweigh the injustice of its omission.

finding of a *prima facie* case of punitive damages) is not sufficient to adequately protect against an outrageously excessive punitive damages award based on prejudice, bias, or other improper motivation. Due process requires, at a minimum, the traditional common-law procedure of post-verdict review.

CONCLUSION

Amicus curiae respectfully requests that the decision of the Oregon Supreme Court be reversed.

Respectfully submitted,

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A. SURVEY OF 1993 DECISIONS REVIEWING JURY PUNITIVE DAMAGES AWARDS

Methodology: Amicus searched the WESTLAW® database for 1993 judicial decisions in which trial or appellate courts reviewed jury punitive damages awards. The search used was "punitive exemplary /3 damages ;30 remittitur reduc! excess! affirm! vacate! & DA (1993)." 964 cases met these search parameters (391 federal; 573 state).

Upon review, 284 of the 964 cases involved actual post-verdict review of a jury punitive damages award. These cases were categorized according to whether the jury punitive damages award was upheld in its entirety, or disturbed in any manner by the reviewing court. A jury punitive damages award was categorized as "disturbed" if any aspect of that award was stricken, remanded or reduced (e.g. remittitur granted), as defined below.

Format: The following tables present the 284 federal and state court decisions reviewing jury punitive damages awards. The federal cases are arranged alphabetically and the state cases are arranged alphabetically by jurisdiction. The tables provide both the jury punitive damages award and the post-verdict review punitive damages award. Abbreviated case citations (providing plaintiff's name, reporter or WESTLAW® citation, and jurisdiction) have been used in the interest of brevity.

Terminology: "Punitive Damages" denotes the punitive damages award assessed by the jury.

"Post-Review Punitive Damages" denotes the amount of the punitive damages award left intact after post-verdict review.

"Unchanged" denotes cases in which the reviewing court did not disturb the jury punitive damages award.

"Stricken" denotes cases in which the jury punitive damages award was set aside in its entirety by the reviewing court.

"Reduced" denotes cases in which the reviewing court diminished the amount of the jury punitive damages award.

"Remanded" denotes cases in which an appellate court directed a lower court to conduct further proceedings relating to the jury punitive damages award, consistent with the principles announced in the opinion. In those cases, the post-review award is denoted as "N/A" for Not Applicable.

"Not Provided" means the decision did not provide dollar amounts for the damages award.

1993 Federal Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Abdul-Akbar,4 F.3d 195 (3d Cir.)	$750.00	$0.00	Stricken
Action House Inc.,1993 WL 204807 (S.D.N.Y.)	$362,100.00	$0.00	Stricken
Atwall,1993 WL 525706 (10th Cir.)	$178,000.00	$178,000.00	Unchanged
Beber,1993 WL 118522 (S.D.N.Y.)	$190,000.00	$190,000.00	Unchanged
Bierle,992 F.2d 873 (8th Cir.)	$25,000.00	$0.00	Stricken
Bingham,823 F. Supp. 1126 (S.D.N.Y.)	$1,000,000.00	$250,000.00	Reduced
Blume,985 F.2d 571 (9th Cir.)	$2,000,000.00	$0.00	Stricken
Burke,6 F.3d 497 (8th Cir.)	$50,000,000.00	$0.00	Stricken
Butler,1993 WL 95513 (E.D. Pa.)	$250,000.00	$250,000.00	Unchanged
Capstick,998 F.2d 810 (10th Cir.)	$2,000,000.00	$2,000,000.00	Unchanged
Chandler,996 F.2d 1223 (9th Cir.)	Not Provided	Not Provided	Unchanged
Charleston Area Medical Ctr.,6 F.3d 243 (4th Cir.)	$15,000,000.00	$0.00	Stricken
Compton,1993 WL 141063 (6th Cir.)	$100,000.00	$100,000.00	Unchanged
Darby,827 F. Supp. 1296 (E.D. Mi.)	$250,000.00	$50,000.00	Reduced
Defender Ind. Inc.,989 F.2d 492 (4th Cir.)	$25,000,000.00	$5,000,000.00	Reduced

Survey Overview of Post-Verdict Review of Jury Punitive Damages Awards for Cases Decided in 1993

	No. of Survey Cases	No. / (%) of Survey Cases where Award was Unchanged	No. / (%) of Survey Cases where Award was Stricken	No. / (%) of Survey Cases where Award was Reduced	No. / (%) of Survey Cases where Award was Remanded
State	213	106 (50%)	52 (24%)	28 (13%)	27 (13%)
Federal	71	24 (34%)	30 (42%)	11 (15%)	6 (8%)
Trial	21	7 (33%)	5 (24%)	7 (33%)	2 (10%)
Appellate	263	123 (47%)	77 (29%)	32 (12%)	31 (12%)
Overall	**284**	130 (46%)	**82 (29%)**	**39 (14%)**	**33 (12%)**
		130 (46%)	154 (54%)		

1993 Federal Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Kirchoff,997 F.2d 401 (8th Cir.)	Not Provided	N/A	Remanded
Koester,11 F.3d 818 (8th Cir.)	$4,800,000.00	$0.00	Stricken
Lightning Lube,4 F.3d 1153 (3rd Cir.)	$50,000,000.00	$0.00	Stricken
Lynch,985 F.2d 560 (6th Cir.)	$400,000.00	$100,000.00	Reduced
Manildra Milling,1993 WL217173 (Fed. Cir. (Kan.))	$2,250,000.00	$0.00	Stricken
Martin,986 F.2d 242 (8th Cir.)	$500,000.00	$0.00	Stricken
Massey,986 F.2d 1428 (10th Cir.)	$4,000,000.00	$4,000,000.00	Unchanged
MBANK Houston,1 F.3d 1439 (5th Cir.)	$8,000,000.00	$0.00	Stricken
McBee,154 B.R. 82 (W.D. Mo.)	$500,000.00	$500,000.00	Unchanged
Medcom Holding Co.,1993 WL 147450 (N.D. Ill.)	$1,000,000.00	$0.00	Stricken
Merrian-Webster,815 F. Supp. 691 (S.D.N.Y.)	$500,000.00	$500,000.00	Unchanged
Miller,989 F.2d 1450 (6th Cir.)	$650,000.00	$0.00	Stricken
Mojica,7 F.3d 552 (7th Cir.)	$125,000.00	$0.00	Stricken
Moretto,1993 WL 127851 (S.D.N.Y.)	$3,720,979.00	$2,265,420.00	Reduced
Oxford Furniture,984 F.2d 1118 (11th Cir.)	$250,000.00	$0.00	Stricken

1993 Federal Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Doe,5 F.3d 347 (8th Cir.)	Not Provided	$10,000.00	Reduced
Dombeck,823 F. Supp. 1475 (W.D. Wi.)	$75,000.00	$0.00	Stricken
Drabik,997 F.2d 496 (8th Cir.)	$7,500,000.00	$0.00	Stricken
Dunn,1 F.3d 1371 (3d Cir.)	$25,000,000.00	$1,000,000.00	Reduced
EEOC,823 F. Supp. 571 (N.D. Ill.)	$500,000.00	$150,000.00	Reduced
Enstar Group,812 F. Supp 1562 (M.D. Ala.)	$18,000,000.00	$10,000,000.00	Reduced
Europlast, Ltd.,10 F.3d 1266 (7th Cir.)	$300,000.00	$0.00	Stricken
Fleet Nat'l Bank,831 F. Supp. 16 (D.R.I.)	$1,000,000.00	N/A	Remanded
Glover,6 F.3d 1318 (9th Cir.)	$1,300,000.00	N/A	Remanded
Guam Asbestos Litig.,1993 WL 470426 (D. Guam App. Div.)	$4,125,000.00	$4,125,000.00	Unchanged
Guaranty Nat'l Ins.,994 F.2d 1280 (7th Cir.)	$1,000,000.00	$0.00	Stricken
Hodson,999 F.2d 540 (6th Cir.)	$500,000.00	$500,000.00	Unchanged
Jeppesen,8 F.3d 1235 (7th Cir.)	$20,000.00	$0.00	Stricken
Kientzy,990 F.2d 1051 (8th Cir.)	$400,000.00	$400,000.00	Unchanged
King,993 F.2d 294 (2d Cir.)	$175,000.00	N/A	Remanded

1993 Federal Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Stone,8 F.3d 1079 (6th Cir.)	$5,000,000.00	$0.00	Stricken
Suwannee County Sch. Bd.,837 F. Supp. 1188 (M.D. Fla.)	$30,000.00	$0.00	Stricken
Tioga Sch. Dist., #15,984 F.2d 915 (8th Cir.)	$75,000.00	N/A	Remanded
Toole,999 F.2d 1430 (11th Cir.)	$5,000,000.00	$0.00	Stricken
Trandes Corp.,996 F.2d 655 (4th Cir.)	$750,000.00	N/A	Remanded
Troutt,835 F. Supp. 899 (W.D. Va.)	$50,000.00	$50,000.00	Unchanged
Tudor Assocs.,1993 WL 564720 (E.D.N.C.)	$7,000,000.00	$0.00	Stricken
TXO Prod. Corp.,113 S. Ct. 2711	$10,000,000.00	$10,000,000.00	Unchanged
U.S. Equal. Emp. Opp. Comm'n,1993 WL 427454 (N.D. Ill.)	$500,000.00	$150,000.00	Reduced
Vance,983 F.2d 1573 (11th Cir.)	Not Provided	Not Provided	Unchanged
Winant,5 F.3d 767 (4th Cir.)	$1,000,000.00	$1,000,000.00	Unchanged

1993 Federal Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Pacific Group,1993 WL 540942 (N.D. Cal.)	$21,000,000.00	$0.00	Stricken
People Helpers,1993 WL 532121 (4th Cir.)	$1.00	$0.00	Stricken
Perry,10 F.3d 806 (4th Cir.)	$10,000.00	$10,000.00	Unchanged
Piesco,12 F.3d 332 (2d Cir.)	$100,000.00	$100,000.00	Unchanged
Presidio Exploration,986 F.2d 1428 (10th Cir.)	$70,000.00	$70,000.00	Unchanged
Purgess,1993 WL 328919 (S.D.N.Y.)	$4,600,000.00	$500,000.00	Reduced
Robertson Oil,1993 WL 532709 (8th Cir.)	$8,000,000.00	$8,000,000.00	Unchanged
Rodick,1 F.3d. 1341 (2d Cir.)	$120,000.00	$120,000.00	Unchanged
Rose,1993 WL 141081 (10th Cir.)	$45,000.00	$45,000.00	Unchanged
Sherrin,2 F.3d 3737 (11th Cir.)	$150,000.00	$0.00	Stricken
Sogg,193 A.D.2d 153 (N.Y.)	$305,000.00	$0.00	Stricken
St. Laurent,991 F.2d 672 (11th Cir.)	$50,000.00	$50,000.00	Unchanged
Stafford,835 F. Supp. 1136 (W.D. Mo.)	$2.00	$2.00	Unchanged
Standley,5 F.3d 319 (8th Cir.)	$20,000.00	$0.00	Stricken
Stevenson,987 F.2d 288 (5th Cir.)	$100,000.00	$0.00	Stricken

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Security Pac. Hous. Servs.,866 S.W.2d 375 (Ark.)	$12,000.00	$12,000.00	Unchanged
Wheeler Motor Co.,1993 WL 541434 (Ark.)	$10,000.00	$10,000.00	Unchanged
Piper,1993 WL 471120 (Ariz. Ct. App.)	$750,000.00	$0.00	Stricken
Ateeq,19 Cal. Rptr.2d 320 (Ct. App.)	$265,000.00	$265,000.00	Unchanged
Burnaby,20 Cal. Rptr.2d 44 (Ct. App.)	$500,000.00	$500,000.00	Unchanged
Greenwood & Co. Real Estate,18 Cal. Rptr.2d 144 (Ct. App.)	$22,000,000.00	N/A	Remanded
Harris,17 Cal. Rptr.2d 649 (Ct. App.)	$530,000.00	$0.00	Stricken
Harris,23 Cal. Rptr.2d 343 (Ct. App.)	$3,500,000.00	$975,000.00	Reduced
Heacock,26 Cal. Rptr.2d 257 (Ct. App.)	$435,181.81	N/A	Remanded
Herrick,24 Cal. Rptr.2d 203 (Ct. App.)	$150,000.00	$75,000.00	Reduced
Hunio,18 Cal. Rptr.2d 253 (Ct. App.)	$1,000,000.00	$1,000,000.00	Unchanged
Kenly,19 Cal. Rptr.2d 771 (Ct. App.)	$200,000.00	N/A	Remanded
McLaughlin,26 Cal. Rptr.2d 520 (Ct. App.)	$43,000,000.00	$0.00	Stricken
Myers Building,17 Cal. Rptr.2d 242 (Ct. App.)	$1,100,000.00	$0.00	Stricken
Nola M,20 Cal. Rptr.2d 97 (Ct. App.)	$988,888.00	$0.00	Stricken

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Cabnetware, Inc.,614 So.2d 1034 (Ala.)	$100,000.00	N/A	Remanded
Cameron,864 P.2d 538 (Alaska)	$161,000.00	$161,000.00	Unchanged
City of Birmingham,1993 WL 527291 (Ala.)	$1,600,000.00	$1,600,000.00	Unchanged
Cottingham,1993 WL 341132 (Ala.)	$1,000,000.00	$600,000.00	Reduced
Grimes,628 So.2d 467 (Ala.)	$3,000,000.00	$0.00	Stricken
Henderson,627 So.2d 878 (Ala.)	$500,000.00	$500,000.00	Unchanged
Independent Fire Ins.,621 So.2d 977 (Ala.)	$100,000.00	$0.00	Stricken
Lozier Corp.,624 So.2d 1034 (Ala.)	$100,000.00	$100,000.00	Unchanged
Phillips Colleges,622 So.2d 308 (Ala.)	$35,000.00	$35,000.00	Unchanged
Reserve Nat'l Ins.,614 So.2d 1005 (Ala.)	$1,000,000.00	$600,000.00	Reduced
Sears Roebuck,1993 WL 341147 (Ala.)	$6,500,000.00	$5,000,000.00	Reduced
BMW of North America,1993 WL 462033 (Ala.)	$4,000,000.00	$2,000,000.00	Reduced
Northwestern Mut. Life,1993 WL 453023 (Ala.)	$24,927,248.00	$12,463,624.00	Reduced
Cater,846 S.W.2d 173 (Ark.)	$350,000.00	$350,000.00	Unchanged
Dillard Dep't Stores,1993 WL 540051 (Ark.)	$100,000.00	N/A	Remanded

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Gary,430 S.E.2d 182 (Ga. Ct. App.)	$3,561.76	$3,561.76	Unchanged
Hill,437 S.E.2d 801 (Ga. Ct. App.)	$25,000.00	$25,000.00	Unchanged
ICI Americas, Inc.,1993 WL 590461 (Ga. Ct. App.)	$1,000,000.00	$1,000,000.00	Unchanged
Mack Trucks,436 S.E.2d 635 (Ga.)	$2,000,000.00	$2,000,000.00	Unchanged
Macon Tel. Publishing,436 S.E.2d 655 (Ga.)	$70,000.00	$0.00	Stricken
Macon Tel.,430 S.E.2d 18 (Ga. Ct. App.)	$70,000.00	$70,000.00	Unchanged
Oglethorpe Power,436 S.E.2d 14 (Ga. Ct. App.)	$100,000.00	$100,000.00	Unchanged
Roberts,453 S.E.2d 227 (Ga. Ct. App.)	$10,000.00	N/A	Remanded
Stone Man,435 S.E.2d 205 (Ga.)	Not Provided	$0.00	Stricken
Hockenberg Equip.,1993 WL 533870 (Iowa)	$5,000.00	$5,000.00	Unchanged
Curtis,850 P.2d 749 (Ind. Ct. App.)	$725,000.00	N/A	Remanded
Borcherding,624 N.E.2d 887 (Ill. App. Ct.)	$13,300.00	$13,300.00	Unchanged
Bryant,619 N.E.2d 550 (Ill. App. Ct.)	$115,000.00	$115,000.00	Unchanged
Cox,613 N.E.2d 1306 (Ill. App. Ct.)	$1,000,000.00	$1,000,000.00	Unchanged
Girsberger,1993 WL 533825 (Ill. App. Ct.)	$576,000.00	$339,028.00	Reduced

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Tavaglione,847 P.2d 574 (Cal.)	$2,300,000.00	N/A	Remanded
Eads,1993 WL 539953 (Colo. Ct. App.)	$5,000.00	$5,000.00	Unchanged
Graphic Directions,862 P.2d 1020 (Colo. Ct. App.)	$35,000.00	$1,058.80	Reduced
Keohane,859 P.2d 291 (Colo. Ct. App.)	$8,500.00	$2,500.00	Reduced
Schnabel,630 A.2d 1361 (Conn. App. Ct.)	$150,000.00	$150,000.00	Unchanged
Tessmann,634 A.2d 870 (Conn.)	$30,000.00	$30,000.00	Unchanged
Arthur Young & Co.,631 A.2d 354 (D.C.)	$75,000.00	$75,000.00	Unchanged
Calbert,1993 WL 478079 (Del.)	$250,000.00	$0.00	Stricken
Carroll Air Systems, Inc.,1993 WL 492538 (Fla. Dist. Ct. App.)	$80,000.00	$80,000.00	Unchanged
Crown Eurocars,1993 WL 540177 (Fla. Dist. Ct. App.)	$200,000.00	$0.00	Stricken
Grove,614 So.2d 22 (Fla. Dist. Ct. App.)	$1,000,000.00	$0.00	Stricken
Hardick,618 So.2d 794 (Fla. Dist. Ct. App.)	Not Provided	$0.00	Stricken
Nordyne,625 So.2d 1283 (Fla. Dist. Ct. App.)	Not Provided	N/A	Remanded
Clarke,429 S.E.2d 291 (Ga. Ct. App.)	Not Provided	Not Provided	Unchanged
Combustion Chems.,433 S.E.2d 60 (Ga. Ct. App.)	$100,000.00	$0.00	Stricken

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Hill,628 So.2d 81 (La. Ct. App.)	$3,000.00	$3,000.00	Unchanged
Jordan,621 So.2d 1141 (La. Ct. App.)	$1,000,000.00	$500,000.00	Reduced
Razorback Oil Tools,626 So.2d 28 (La. Ct. App.)	$4,500,000.00	N/A	Remanded
Caldor,625 A.2d 959 (Md. Ct. Spec. App.)	$357,500.00	N/A	Remanded
Fairfax Sav.,619 A.2d 141 (Md. Ct. Spec. App.)	$6,000,000.00	N/A	Remanded
DiPietro,628 A.2d 1019 (Me.)	$30,000.00	$20,000.00	Reduced
Haworth,623 A.2d 150 (Me.)	$10,000.00	$10,000.00	Unchanged
Laliberte,628 A.2d 1050 (Me.)	$100,000.00	N/A	Remanded
Staples,629 A.2d 601 (Me.)	Not Provided	$0.00	Stricken
Fellows,506 N.W.2d 534 (Mich. Ct. App.)	$500,000.00	$30,000.00	Stricken
Charles R. Rosenbloom,501 N.W.2d 597	$71,000.00	$30,000.00	Reduced
Independent Sch. Dist. No. 622,495 N.W.2d 244 (Minn. Ct. App.)	$2,462,250.00	$1,231,125.00	Reduced
Carpenter,853 S.W.2d 346 (Mo. Ct. App.)	$17,000.00	$17,000.00	Unchanged
Green,851 S.W.2d 553 (Mo. Ct. App.)	$25,000.00	$25,000.00	Unchanged
Miller,1993 WL 360960 (Mo. Ct. App.)	$140,000.00	$140,000.00	Unchanged

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Jerry Clark Equip.,612 N.E.2d 858 (Ill. App. Ct.)	$18,000.00	$18,000.00	Unchanged
Johnston,621 N.E.2d 137 (Ill. App. Ct.)	$50,000.00	$0.00	Stricken
Kennan,620 N.E.2d 1208 (Ill. App. Ct.)	$193,000.00	$0.00	Stricken
Kochan,610 N.E.2d 683 (Ill. App. Ct.)	$5,000,000.00	$5,000,000.00	Unchanged
McKernan,623 N.E.2d 981 (Ill. App. Ct.)	$420,000.00	$420,000.00	Unchanged
Shirk,617 N.E.2d 152 (Ill. App. Ct.)	$150,000.00	$0.00	Stricken
Erie Ins.,610 N.E.2d 283 (Ind. Ct. App.)	Not Provided	$0.00	Stricken
Erie Ins.,622 N.E.2d 515 (Ind.)	$11,000.00	$0.00	Stricken
Miller Brewing,608 N.E.2d 975 (Ind.)	$1,989,260.00	$0.00	Stricken
Star Bank, N.A.,626 N.E.2d 466 (Ind. Ct. App.)	$7,000.00	$7,000.00	Unchanged
Beeman,496 N.W.2d 247 (Iowa)	$5,000,000.00	$0.00	Stricken
Burrowwood Assocs.,853 P.2d 1175 (Kan. Ct. App.)	$65,000.00	$65,000.00	Unchanged
Gillespie,853 P.2d 692 (Kan.)	$4,114,250.00	N/A	Remanded
Smith,1993 WL 540020 (Kan.)	$120,000.00	N/A	Remanded
Hanson,865 S.W.2d 302 (Ky.)	$5,775,000.00	$5,775,000.00	Unchanged

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Jeffries,828 F. Supp 1066 (S.D.N.Y.)	$400,000.00	$360,000.00	Reduced
Kelleher,596 N.Y.S.2d 136 (App. Div.)	$1,000,000.00	$250,000.00	Reduced
Licette Music Corp.,601 N.Y.S.2d 297 (App. Div.)	$750,000.00	$750,000.00	Unchanged
Papa,598 N.Y.S.2d 558 (App. Div.)	$2,500,000.00	$1,000,000.00	Reduced
Prozeralik,593 N.Y.S.2d 662 (App. Div.)	$10,000,000.00	$10,000,000.00	Unchanged
Prozeralik,626 N.E.2D 34 (N.Y.)	$10,000,000.00	N/A	Remanded
Warner,598 N.Y.S.2d 863 (App. Div.)	$5,000.00	$0.00	Stricken
Williams,602 N.Y.S.2d 199 (App. Div.)	$12,792.00	$0.00	Stricken
Wolfisch,601 N.Y.S.2d 300 (App. Div.)	$5,000.00	$0.00	Stricken
Arthur Young & Co.,623 N.E.2d 1303 (Ohio Ct. App.)	$600.00	$600.00	Unchanged
Cabe,1993 WL 419086 (Ohio Ct. App.)	$250,000.00	$0.00	Stricken
Calmes,1993 WL 455253 (Ohio Ct. App.)	$1,000,000.00	$0.00	Reduced
Crothers,1993 WL 405449 (Ohio Ct. App.)	$5,000.00	$5,000.00	Unchanged
Edwards,1993 WL 413602 (Ohio Ct. App.)	Not provided	$0.00	Unchanged
Herald,1993 WL 277541 (Ohio Ct. App.)	$5,000,000.00	$2,500,000.00	Reduced

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Ross,1993 WL 402914 (Mo. Ct. App.)	$1,000,000.00	$0.00	Stricken
Self,854 S.W.2d 571 (Mo. Ct. App.)	Not Provided	$0.00	Stricken
Strothkamp,1993 WL 79239 (Mo. Ct. App.)	$20,000,000.00	N/A	Remanded
ACI Chems.,615 So.2d 1192 (Miss.)	Not Provided	$0.00	Unchanged
Kendal,1993 WL 522804 (Miss.)	$500.00	$500.00	Unchanged
Polk,613 So.2d 841 (Miss.)	$50,000.00	$50,000.00	Unchanged
Dees,861 P.2d 141 (Mont.)	$575,000.00	$300,000.00	Reduced
Lovell,424 S.E.2d 181 (N.C. Ct. App.)	$225,000.00	$225,000.00	Unchanged
Martinez,424 S.E.2d 154 (N.C. Ct. App.)	$30,000.00	$30,000.00	Unchanged
United Labs.,437 S.E.2d 374 (N.C.)	$100,000.00	$100,000.00	Unchanged
Fisher,508 N.W.2d 352 (N.D.)	$30,000.00	$30,000.00	Unchanged
Abbamont,634 A.2d 538 (N.J.)	$60,000.00	N/A	Remanded
Herman,627 A.2d 1081 (N.J.)	$400,000.00	$400,000.00	Unchanged
Wachstein,625 A.2d 527 (N.J. Super. Ct. App. Div.)	$16.00	$16.00	Unchanged
Ward,623 A.2d 285 (N.J. Super. Ct. App. Div.)	$50,000.00	$50,000.00	Unchanged

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Host,1993 WL 266901 (Ohio Ct. App.)	$50,000.00	$0.00	Stricken
James,1993 WL 208351 (Ohio Ct. App.)	$120,000.00	$120,000.00	Unchanged
Johnson,1993 WL 323380 (Ohio Ct. App.)	$10,000.00	$0.00	Stricken
Lannigan,1993 WL 310380 (Ohio Ct. App.)	$100,000.00	$100,000.00	Unchanged
Mitterholzer,1993 WL 215381 (Ohio Ct. App.)	$25,000.00	$0.00	Stricken
Moskovitz,1993 WL 4549 (Ohio Ct. App.)	$3,000,000.00	$0.00	Stricken
Shellhorn,1993 WL 264613 (Ohio Ct. App.)	$1,000.00	$0.00	Stricken
Turner,1993 WL 485256 (Ohio Ct. App.)	$120,000.00	$120,000.00	Unchanged
Calvert,856 P.2d 1011 (Okla. Ct. App.)	$30,000.00	$30,000.00	Unchanged
Nally,1993 WL 562078 (Okla. Ct. App.)	$50,000.00	$50,000.00	Unchanged
Nelson,864 P.2d 1279 (Okla.)	$150,000.00	$5,504.00	Reduced
Rodebush,1993 WL 14683 (Okla.)	$1,200,000.00	$1,200,000.00	Unchanged
Wallace,850 P.2d 1056 (Okla.)	$42,000.00	$42,000.00	Unchanged
Eulrich,853 P.2d 1350 (Or.)	$8,912.00	N/A	Remanded
Huffman and Wright Logging,857 P.2d 101 (Or.)	$25,000.00	$25,000.00	Unchanged

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Lovejoy Specialty,855 P.2d 159 (Or. Ct. App.)	$700,000.00	$700,000.00	Unchanged
Nelson,862 P.2d 1293 (Or.)	Not provided	N/A	Remanded
Orberg,851 P.2d 1084 (Or.)	$5,000,000.00	$5,000,000.00	Unchanged
Raichl,852 P.2d 214 (Or. Ct. App.)	Not provided	N/A	Remanded
Rogue Fed. Credit,855 P.2d 1146 (Or. Ct. App.)	$1,500.00	$0.00	Stricken
Feldmam,1993 WL 404094 (E.D. Pa.)	$20,000.00	$20,000.00	Unchanged
Trainor,625 A.2d 1349 (R.I.)	$250,000.00	$0.00	Stricken
Camlin,428 S.E.2d 6 (S.C. Ct. App.)	$100,000.00	$100,000.00	Unchanged
Dowling,428 S.E.2d 709 (S.C.)	Not provided	$0.00	Stricken
Foggie,431 S.E.2d 587 (S.C.)	$75,000.00	$0.00	Stricken
Hansel,437 S.E.2d 159 (S.C. Ct. App.)	Not provided	$0.00	Unchanged
Harold Tyner Dev. Builders,429 S.E.2d 819 (S.C. Ct. App.)	$150,000.00	$150,000.00	Unchanged
Kinard,433 S.E.2d 835 (S.C.)	$444,215.50	$444,215.50	Unchanged
Weir,435 S.E.2d 864 (S.C.)	$500,000.00	$275,000.00	Reduced
Brandriet,499 N.W.2d 613 (S.D.)	$200,000.00	$200,000.00	Unchanged

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Fidelity & Guaranty Ins.,865 S.W.2d 103 (Tex. Ct. App.)	$4,250,000.00	$250,000.00	Reduced
General Chem. Corp.,852 S.W.2d 916 (Tex.)	$30,000,000.00	$8,000,000.00	Reduced
General Mills Restaurants,865 S.W.2d 48 (Tex. Ct. App.)	$50,000.00	$50,000.00	Unchanged
General Motors Corp.,1993 WL 483479 (Tex.)	$2,500,000.00	$0.00	Stricken
Gonzalez,1993 WL 265454 (Tex. Ct. App.)	$10,000.00	$10,000.00	Unchanged
Greater Houston Transp.,850 S.W.2d 579 (Tex. Ct. App.)	$500,000.00	$500,000.00	Unchanged
Greer,1993 WL 444320 (Tex. Ct. App.)	$50,000.00	$0.00	Stricken
Haryanto,860 S.W.2d 913 (Tex. Ct. App.)	$2,000,000.00	$2,000,000.00	Unchanged
Haynes & Boone,864 S.W.2d 662 (Tex. Ct. App.)	$1,500,000.00	$1,500,000.00	Unchanged
Heil-Quaker,863 S.W.2d 210 (Tex. Ct. App.)	$2,500,000.00	$1,000,000.00	Reduced
Jochec,863 S.W.2d 516 (Tex. Ct. App.)	$700,000.00	N/A	Remanded
Keene Corp.,1993 WL 522584 (Tex. Ct. App.)	$2,000,000.00	$2,000,000.00	Unchanged
McLendon,862 S.W.2d 662 (Tex. Ct. App.)	$100,000.00	$100,000.00	Unchanged
Missouri Pac. R.R.,861 S.W.2d 501 (Tex. Ct. App.)	$10,000,000.00	$8,872,073.12	Reduced
Motsenbocker,863 S.W.2d 126 (Tex. Ct. App.)	$420,000.00	$420,000.00	Unchanged

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Blackburn,1993 WL 17140 (Tenn. Ct. App.)	$50,000.00	N/A	Remanded
Davis,1993 WL 104630 (Tenn. Ct. App.)	$2,000.00	N/A	Remanded
Acme Boot Co.,862 S.W.2d 806 (Tex. Ct. App.)	$100,000.00	$100,000.00	Unchanged
Am. Rec. Mkts.,846 S.W.2d 476 (Tex. Ct. App.)	$50,000.00	N/A	Remanded
Berry Property,850 S.W.2d 644 (Tex. Ct. App.)	$5,000,000.00	$5,000,000.00	Unchanged
Borden, Inc.,850 S.W.2d 821 (Tex. Ct. App.)	$3,118,000.00	$3,118,000.00	Unchanged
Borden, Inc.,860 S.W.2d 515 (Tex. Ct. App.)	$1,750,000.00	$1,750,000.00	Unchanged
Box,1993 WL 561642 (Tex. Ct. App.)	$5,000.00	$5,000.00	Unchanged
Boyles,855 S.W.2d 593 (Tex.)	$500,000.00	N/A	Remanded
City of La Porte,851 S.W.2d 876 (Tex. Ct. App.)	$1,000,000.00	$1,000,000.00	Unchanged
Davis,865 S.W.2d 231 (Tex. Ct. App.)	$100,000.00	$100,000.00	Unchanged
Ellis County St. Bank,1993 WL 558938 (Tex. Ct. App.)	$1,535,000.00	$1,535,000.00	Unchanged
Employers Nat'l Ins. Co.,1993 WL 92762 (Tex. Ct. App.)	$250,000.00	$0.00	Stricken
Federal Deposit Ins.,859 S.W.2d 635 (Tex. Ct. App.)	$100.00	$0.00	Stricken
Federal Express Corp.,846 S.W.2d 282 (Tex.)	$50,000.00	$0.00	Stricken

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
United States Sporting Prods.,865 S.W.2d 214 (Tex. Ct. App.)	$482,125.00	$482,125.00	Unchanged
Wal-Mart Stores,1993 WL 502513 (Tex. Ct. App.)	$400,000.00	$0.00	Stricken
Alta Indus.,846 P.2d 1282 (Utah)	$100,000.00	$0.00	Stricken
Crookston,860 P.2d 937 (Utah)	$4,000,000.00	$4,000,000.00	Unchanged
Lake Philgas Serv.,845 P.2d 951 (Utah Ct. App.)	$25,000.00	$25,000.00	Unchanged
ONG Int'l.,850 P.2d 447 (Utah)	$1,800,000.00	$1,800,000.00	Unchanged
Ingles,435 S.E.2d 641 (Va.)	$100,000.00	N/A	Remanded
Marina Shores, Ltd.,435 S.E.2d 136 (Va.)	$480,000.00	$0.00	Stricken
Carmichael,1993 WL 557150 (Vt.)	$100,000.00	$100,000.00	Unchanged
Loula,498 N.W.2d 866 (Wis. Ct. App.)	$56,000.00	$0.00	Stricken
Marsh,505 N.W.2d 162 (Wis. Ct. App.)	$550,000.00	$0.00	Stricken
Moriarty,506 N.W.2d 170 (Wis. Ct. App.)	$10,000.00	$10,000.00	Unchanged
Nash,499 N.W.2d 301 (Wis. Ct. App.)	$15,000.00	$15,000.00	Unchanged
Vanderwal,508 N.W.2d 74 (Wis. Ct. App.)	$45,000.00	$45,000.00	Unchanged
Wood,502 N.W.2d 617 (Wis. Ct. App.)	$7,000.00	$7,000.00	Unchanged

1993 State Cases

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
National Convenience Stores,1993 WL 153756 (Tex. Ct. App.)	$1,000,000.00	$1,000,000.00	Unchanged
Nationwide Mut. Ins.,857 S.W.2d 644 (Tex. Ct. App.)	$1,000,000.00	$1,000,000.00	Unchanged
Newman,866 S.W.2d 721 (Tex. Ct. App.)	$150,000.00	$150,000.00	Unchanged
Nicolau,1993 WL 521051 (Tex. Ct. App.)	$300,000.00	$300,000.00	Unchanged
Phar-Mor,853 S.W.2d 710 (Tex. Ct. App.)	$50,000.00	$0.00	Stricken
Prentice Properties Ltd.,1993 WL 189624 (Tex. Ct. App.)	$900,000.00	$0.00	Stricken
Qualicare of East Texas,863 S.W.2d 220 (Tex. Ct. App.)	$50,000.00	$50,000.00	Unchanged
Ralston Purina,850 S.W.2d 629 (Tex. Ct. App.)	$185,000.00	$60,000.00	Reduced
Rhodes,848 S.W.2d 833 (Tex. Ct. App.)	$125,000.00	$125,000.00	Unchanged
Rodiguez,856 S.W.2d 552 (Tex. Ct. App.)	Not Provided	N/A	Reduced
Sanchez,860 S.W.2d 503 (Tex. Ct. App.)	$75,000.00	$75,000.00	Unchanged
Shelton Ins. Agency,848 S.W.2d 739 (Tex. Ct. App.)	$500,000.00	$0.00	Stricken
State Farm Fire & Casualty,857 S.W.2d 126 (Tex. Ct. App.)	$2,000,000.00	$2,000,000.00	Unchanged
Swartwood,1993 WL 265128 (Tex. Ct. App.)	$27,000.00	$27,000.00	Unchanged
Texas Dept' of Human Servs.,855 S.W.2d 136 (Tex. Ct. App.)	$10,000,000.00	$10,000,000.00	Unchanged

Case	Jury Punitive Damages	Post-Review Punitive Damages	Result
Horan, 433 S.E.2d 559 (W. Va.)	$40,000.00	$40,000.00	Unchanged
LaPlaca, 428 S.E.2d 322 (W. Va.)	$25,000.00	$0.00	Stricken
Wilt, 1993 WL 517042 (W. Va.)	$1,000,000.00	$1,000,000.00	Unchanged

B. AMERICAN JURISDICTIONS ON SUBMITTING WEALTH EVIDENCE TO JURIES IN ASSESSING PUNITIVE DAMAGES

PROHIBIT [5]

AL Industrial Chem. & Fiberglass Corp. v. Chandler, 547 So.2d 812, 835 (Ala. 1988).

KY Hensley v. Paul Miller Ford, 508 S.W.2d 759, 764 (Ky. Ct. App. 1974).

MI Peisner v. Detroit Free Press, 242 N.W.2d 775, 780 (Mich. Ct. App. 1976), *aff'd as modified by* 364 N.W.2d 600 (Mich. 1984).

NE Singles v. Union Pac. R.R. Co., 119 N.W.2d 680, 684 (Neb. 1963).

FL Barr v. Interbay Citizens Bank of Tampa, Fla., 635 P.2d 441, 444 (Wa. 1981) (en banc) (prohibits punitive damages on public policy grounds).

PERMIT WITHOUT SAFEGUARDS [18]

AK Pletnikoff v. Johnson, 765 P.2d 973, 979 (Alaska 1988).

CT Lenz v. CNA Assurance Co., 630 A.2d 1082, 1083 (Conn. Super. Ct. 1993); but see Conn. Gen. Stat. Ann. § 52-240b (West 1993) (court determines amount of award).

GUAM In re Guam Asbestos Litigation (Brennan v. Owens-Corning Fiberglass Corp.), No. 92-00064A, 1993 WL 470426 (D. Guam App. Div. Oct. 19, 1993) at (wealth evidence required for a punitive damage award).

HI Beerman v. Toro Mfg. Corp., 615 P.2d 749, 755 (Haw. Ct. App. 1980).

IL Walker v. Dominick's Finer Foods, Inc., 415 N.E.2d 1213, 1217 (Ill. App. Ct. 1981).

IN Ramada Hotel Operating Co. v. Schaffer, 576 N.E.2d 1264, 1268 (Ind. Ct. App. 1991).

LA *Jordan v. Intercontinental Bultank Corp.*, 621 So.2d 1141, 1157 (La. Ct. App.), *cert. denied*, 623 So.2d 1335 (La.), *cert. denied*, 623 So.2d 1336 (La.), *reconsideration denied*, 625 So.2d 1026 (La. 1993), *cert. denied*, -- U.S. --, NO. 93-929, 1993 WL 531465 (Jan. 24, 1994).
ME *Caron v. Caron*, 577 A.2d 1178, 1180 (Me. 1990).
NH *Belknap v. R.R.*, 49 N.H. 358, 374 (1870).
NM *Aragon v. Gen. Elec. Credit Corp.*, 557 P.2d 572, 575 (N.M. Ct. App.), *cert. denied*, 558 P.2d 619 (N.M. 1976).
NC *Juarez-Martinez v. Deans*, 424 S.E.2d 154 (N.C. Ct. App.), *review denied*, 429 S.E.2d 558 (N.C. 1993).
OK *Wood Petroleum Corp. v. Delhi Gas Pipeline Corp.*, 700 P.2d 1023, 1028 (Okla. Ct. App. 1983).
P.R. *Cuello-Suarez v. Autoridad De Energia Electrica De Puerto Rico*, 737 F. Supp. 1243, 1255, 1255 n.24 (D.P.R. 1990).
SC *Hicks v. Herring*, 144 S.E.2d 151, 154 (S.C. 1965).
VT *Parker v. Hoefer*, 100 A.2d 434, 446-47 (Vt. 1953).
V.I. *Herman v. Hess Oil Virgin Islands Corp.*, 524 F.2d 767, 772 (3rd Cir. 1975).
VA *Weatherford v. Birchett*, 164 S.E. 535, 537 (Va. Ct. App. 1932).
WV *TXO Production Corp. v. Alliance Resources Corp.*, 419 S.E.2d 870, 887 (W. Va. 1992), *aff'd*, 113 S. Ct. 2711 (1993).
WI *Wangen v. Ford Motor Co.*, 294 N.W.2d 437, 447 (Wis. 1980).

PERMIT AFTER PLAINTIFF OFFERS EVIDENCE THAT JUSTIFIES IMPOSING PUNITIVE DAMAGES [5]

AR *Holmes v. Hollingsworth*, 352 S.W.2d 96, 99-100 (Ark. 1961).
DE *Bryan v. Thos. Best & Sons, Inc.*, 453 A.2d 107, 108 (Del. Super. Ct. 1982).
IA *Hoekstra v. Farm Bureau Mut. Ins. Co.*, 382 N.W.2d 100, 109-110 (Iowa 1986).

MD *Hamilton v. Ford Motor Credit Co.*, 502 A.2d 1057, 1067 (Md. Ct. Spec. App.), *cert. denied*, 507 A.2d 631 (Md. 1986).
SD *Smith v. Weber*, 16 N.W.2d 537, 540 (S.D. 1944).

PERMIT AFTER PLAINTIFF PROVES A PRIMA FACIE CASE FOR IMPOSING PUNITIVE DAMAGES [8]

AZ *Ball v. Prentice*, 781 P.2d 628, 630-31 (Ariz. Ct. App. 1989).
CO *Leidholt v. District Court*, 619 P.2d 768, 771 (Colo. 1980).
DC *Robinson v. Sarisky*, 535 A.2d 901, 907 (D.C. 1988).
FL *Rinaldi v. Aaron*, 314 So.2d 762, 763-64 (Fla. 1975) (prove liability for punitive damages).
MS *Mutual Life Ins. Co. of N.Y. v. Estate of Wesson*, 517 So.2d 521, 532 (Miss. 1987)(prove liability for punitive damages) *cert. denied*, 486 U.S. 1043 (1988)
PA *Feld v. Merriam*, 461 A.2d 225, 237 (Pa. Super. Ct. 1983), *rev'd on other grounds*, 485 A.2d 742 (Pa. 1984).
RI *Palmisano v. Toth*, 624 A.2d 314, 320 (R.I. 1993).
OR Or. Rev. Stat. § 41.315(2) (1991).

BIFURCATED PROCEDURE [1] [14]

CA Cal. Civ. Code § 3295(d) (West 1994)
GA Ga. Code. Ann. § 51-12-5.1(d) (1993)
KS Kan. Stat. Ann. § 60-3701 (1992)
MO Mo. Ann. Stat. § 510.263 (Vernon 1993)
MT Mont. Code Ann. § 27-1-221 (1993)
NV Nev. Rev. Stat. § 42.005 (1993)
OH Ohio Rev. Code Ann. § 2315.21 (1992) (court determines amount of award)

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1. In the first stage, the jury determines whether petitioner is entitled to punitive damages. If the jury determines that plaintiff is entitled to punitive damages, then in the second stage, the jury hears wealth evidence in determining the amount of the award.

UT Utah Code Ann. § 78-18-1 (1993)
MN Minn. Stat. Ann. § 549.20 (West 1994) (bifurcates the entire punitive damage issue) [2]
ID *Spence v. Howell*, Nos. 19708, 19779, 1994 WL 6807, at *6 (Idaho Ct. App. Jan. 13, 1994).
NY *Rozwell v. Philanz Oldsmobile, Inc.* 591 N.Y.S.2d 649, 650 (App. Div. 1992).
TN *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn.), *reh'g denied*, No. 12, 1992 WL 136471 (Tenn. May 26, 1992).
TX *Transportation Ins. Co. v. Moriel*, D-1507, 1994 Tex. LEXIS 23, at *63.
WY *Campen v. Stone*, 635 P.2d 1121, 1132 (Wyo. 1981).

OTHER [3]

ND North Dakota, by statute enacted in 1987, prohibits wealth evidence in determining punitive damages. N.D. Cent. Code § 32-03.2-11 (1993); ***But see Stoner v. Nash Finch Inc.***, 446 N.W.2d 747, 754 (N.D. 1989) (jury may consider evidence of defendant's wealth when determining the amount of punitive damages).
MA Massachusettes - Unable to locate any authority indicating whether Massachusetts permits juries to hear wealth evidence in determining punitive damages.
NJ N.J. Stat. Ann. § 2A:58C-5 (West 1993)(trifurcated procedure)

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2. Thus, during the first stage the jury determines only the plaintiff's compensatory damages. Wealth evidence is not admissible at this stage. At the second stage, however, the trier of fact determines both whether plaintiff is entitled to punitive damages and what amount to award.